



## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

Utah State Office

P.O. Box 45155

Salt Lake City, UT 84145-0155

<http://www.blm.gov>



IN REPLY REFER TO:

3100

(UT-922)

CERTIFIED MAIL – Return Receipt Requested

September 21, 2007

### DECISION

Center for Native Ecosystems	:	Protest of the Inclusion of Certain
Jacob Smith, Executive Director	:	Parcels in the February 21, 2006
1536 Wynkoop, Suite 302	:	Competitive Oil and Gas Lease Sale
Denver, Colorado 80202	:	

### Protest Denied in Part

On December 23, 2005, the Bureau of Land Management (BLM) provided notice that 109 parcels (172,095 acres) of land would be offered in a competitive oil and gas lease sale on February 21, 2006. The notice also indicated that the protest period for the lease sale would end February 6, 2006. By letter received by BLM on February 6, 2006, the Center for Native Ecosystems (CNE) protested the inclusion of the following 14 parcels of land located on public lands administered by the BLM in the Vernal and Moab Field Offices (FOs). These parcels are:

<b>Vernal FO:</b>	UT0206-064	UT0206-221
	UT0206-065	UT0206-224
	UT0206-066	UT0206-225
	UT0206-067	UT0206-226
	UT0206-068	UT0206-227
	UT0206-110	
<b>Moab FO:</b>	UT0206-235	
	UT0206-236	
	UT0206-239	

Of the 14 protested parcels, this decision addresses the following parcels: UT0206-064 through UT0206-068, UT0206-110, UT0206-221, UT0206-226, and UT0206-239. CNE's protest of the remaining 5 parcels will be addressed at a later date.

## General Allegations

The first page of CNE's February 6, 2006 protest letter lists the parcels CNE is protesting. After each identified parcel, CNE provides the ostensible ground for the protest. For example, for the parcels at issue in this decision, UT0206-064 through UT0206-068, UT0206-110, UT0206-221, UT0206-226, and UT0206-239, the protest letter identifies "Heart of the West Conservation Plan Corridor," "Heart of the West Conservation Plan Duchesne Core," or "Heart of the West Conservation Plan Book Cliffs Core" as the grounds for protest. However, after listing the parcels and grounds for protest for each parcel, the next 23 pages of the protest letter present myriad other grounds for protest and citations to information that are not specific and may or may not apply to any one parcel. For example, CNE makes general allegations regarding land use plan revisions, nominated Areas of Critical Environmental Concern, purported "new information" related to sensitive species, coal bed methane, coordination with the Fish and Wildlife Service, notices and stipulations, and cumulative impact on sagebrush die-off. Other than the list of parcels and grounds for protest presented on the first page, the protest letter makes no attempt to explain how the general allegations may apply to any of the protested parcels.<sup>1</sup>

Apparently, CNE intends its general allegations to apply only to the extent specified in the list of parcels and associated grounds for protest. However, to the extent that CNE intends to raise the general allegations as to the parcels at issue in this decision, UT0206-064 through UT0206-068, UT0206-110, UT0206-221, UT0206-226, and UT0206-239, CNE fails to provide any rationale explaining how the allegations relate to the parcels. Consequently, CNE's allegations are conclusory and unsupported by specific facts,<sup>2</sup> and its protest is dismissed as to the general allegations. (BLM addresses below CNE's allegation regarding the "Heart of the West Conservation Plan"). BLM is under no obligation, as a matter of law or policy, to sort through a protestant's laundry-list of alleged errors and to divine which the protestant intended to invoke for a particular parcel and then to determine how it may apply. This would unreasonably divert the time and resources that BLM otherwise needs to manage the public lands as mandated by Congress.

I note that CNE has often and repeatedly taken advantage of BLM's protest procedure as well as the administrative appeal process before the Interior Board of Land Appeals. The protest letter recites that CNE "has a longstanding record of involvement in management decisions and public participation opportunities on public lands" and that its "mission" includes participating in "administrative processes" and "legal actions." (Page 2). Consequently, CNE should be well aware of its responsibilities as a protestant.

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<sup>1</sup> The general allegations in CNE's February 6, 2006 protest letter appear to be largely boilerplate used in other protests CNE has made to BLM.

<sup>2</sup> It is well established that BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant's allegations are unsupported by facts in the record or competent evidence. See, e.g., Southern Utah Wilderness Alliance, 122 IBLA 17, 20-21 (1992); John W. Childress, 76 IBLA 42, 43 (1983); Patricia C. Alker, 70 IBLA 211, 212 (1983); Geosearch, Inc., 48 IBLA 76 (1980).

For BLM to have a reasonable basis to consider future protests, CNE must identify for each parcel it protests the specific ground for protest and explain how it applies to the parcel. Any allegations of error based on fact must be supported by competent evidence, and a protest may not merely incorporate by reference arguments or factual information provided in a previous protest. The protestant must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to its allegations, and explain how such stipulations or notices do not obviate the allegations. Failure to comply with any of the foregoing may result in the summary dismissal of the protest.

### **Heart of the West Wildlands Network Design**

In 2004, the Wild Utah Project prepared a document entitled the “Heart of the West Wildlands Network Design Area.” CNE’s protest lists 9 parcels in the Vernal and Moab FOs (UT0206-064 through UT0206-068, UT0206-110, UT0206-221, UT0206-226 and UT0206-239) within an area identified as a Heart of the West Conservation Plan Corridor, Heart of the West Conservation Plan Duchesne Core, or Heart of the West Conservation Plan Book Cliffs Core and asserts that this network design presents significant new information that has not been evaluated in previous NEPA documents and thus requires a supplemental EIS.

The Heart of the West Wildlands Network Design Area report provides general and conclusive statements that merely describe the area. CNE does not show that BLM has failed to examine impacts from the subject parcels or how the purported new information would change the analysis of environmental impact reflected in the current record. The ecological nature or the character of the parcels did not change or become significant new information simply by the designation of the Heart of the West Wildlands Network Design Area by an interest group. Under 43 U.S.C. § 1732(a), BLM must manage public lands in accordance with the applicable land use plan, not in accordance with a document created by an interest group. For these reasons, the protest is denied on this issue.

### **Conclusion**

For the reasons discussed above, the BLM denies CNE’s protest for parcels UT0206-064 through UT0206-068, UT0206-110, UT0206-221, UT0206-226, and UT0206-239. BLM has received offers on all of these parcels and will issue leases for these parcels subsequent to issuing this decision<sup>3</sup>.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B §4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient

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<sup>3</sup> Parcel UT0206-226 is the subject of another protest. Depending on the resolution of this protest, the BLM will issue or not issue the subject lease.

justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to each party named in this decision and to the Office of the Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find attached a list of those parties who purchased the subject parcels at the February 2006 sale and therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.

/s/ Jeff Rawson

for Selma Sierra  
State Director

#### Enclosures

- Appendix 1. Form 1842-1 (2pp)
- Appendix 2. List of purchasers (1p)

cc: List of purchasers (7)

Office of the Solicitor, 125 So. State St., Suite 6201, Salt Lake City, UT 84138

bcc: WO-310, 501LS

Field Offices: Vernal, Moab

Reading Files, UT-910, UT-930, UT-922, UT-952

Case Files

List of Purchasers for February 2006  
CNE Protested Parcels

Dolar Energy, LLC  
935 E South Union Ave, D-202  
Midvale, Ut 84047-2393

Gary B. Carlson  
55 South 500 East  
Kaysville, UT 84037

Lone Tree Energy & Assoc.  
950 17<sup>th</sup> Street, Suite 2000-A  
Denver, CO 80202

Slate River / Mustang Fuel  
1600 Broadway, Suite 900  
Denver, CO 80202

Tarh E & P Holdings, LP  
98 San Jacinto Blvd, Suite 800  
Austin, TX 78701

Turner Petroleum Land Services  
8438 South 1275 East  
Sandy, UT 84094

William P. Harris  
P.O. Box 47  
Amarillo, TX 79105